Mergers and monopolies: legal aspects

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MERGERS AND MONOPOLIES: LEGAL ASPECTS

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ISSUE DEFINITION

Between 1945 and 1949, there were fewer than 60 mergers per year in Canada. In the 1960s, the number of mergers averaged 253 yearly, while between 1977 and 1984 there was an annual average of over 495. Between July 1986 and March 1990 over 3,600 mergers took place. Since 1975, the 100 largest companies in Canada have been involved in more than 150 mergers and takeovers. More than 25% of the growth of these large companies has come from financial transactions rather than from the development of new products or growth in the marketplace. With the increased concentration of power in the Canadian economy in recent years, competition policy to deal with mergers and monopolies has once again become of prime importance.

BACKGROUND AND ANALYSIS

Competition legislation has existed in Canada since 1889. Legislation regulating competition in the marketplace is based upon the assumption that competition among businesses is beneficial to both the economy and society. Accordingly, anti-competitive conduct is proscribed to the extent that it affects the economy in a manner detrimental to the public interest.

The terms "merger" and "monopoly" were first incorporated into the Combines Investigation Act in 1910. The business entity resulting from a merger or which occupied a dominant position in a market was thought to be capable of unfairly exercising its power, which would ultimately be to the detriment of the public.

The Combines Investigation Act, which proscribed mergers and monopolies detrimental to the public, was not an effective tool for dealing with abuses of economic power. There was a singular lack of successful prosecutions, even in what seemed to be blatant cases of monopoly. In the 1960s, perhaps realizing the futility of attempting prosecutions, the Director of Investigation and Research, Combines Investigation Act, sought to use a program of compliance to deter harmful mergers and monopolies. In 1966, the "Position of the Director on Merger Law" was published, which set out 12 factors considered by the Combines Branch in assessing whether a merger and monopoly would lessen competition to the detriment of the public. Among these factors were: existing concentration ratios in the industry, barriers to entry, competition left in the market, the acquiring firm's history of growth by merger, any evidence of intent to reduce competition, evidence of increased efficiency resulting from the merger, and evidence of detriment, such as excessive profits, following the merger. Reliance was thus placed on the Director's efforts at control through admonition rather than on an attempt at clarification of the jurisprudence through additional courtroom tests.

Over the years, it became apparent that the business community did not fear the monopoly and merger proscriptions. A few examples of activities which occurred without Combines Investigation Act implications are: the acquisition by the Hudson's Bay Co. of both Simpson's and Zeller's and the acquisition of Hudson's Bay by Thomson interests; the apparent assumption of Southam Inc. and Thomson Newspapers, confirmed by their December 1983 acquittal, that they could reorganize their spheres of influence in the newspaper publishing arena without contravening the provisions of the Combines Investigation Act; and the willingness of two of Canada's larger real estate companies, Bramalea Ltd. and Cadillac Fairview, to discuss a merger which would have created a real estate company with more assets than any other in the world. One can add the attempt in the mid-1970s of Power Corporation to take over Argus, which led to the creation of the Bryce Royal Commission on Corporate Concentration.

It seems that Thomson and Southam had good grounds for believing, when they made the deals which resulted in the closing of the Ottawa Journal, the Winnipeg Tribune, and the Montreal Star, that they were unlikely to be convicted of operating illegal newspaper monopolies or of entering into illegal mergers. The 1976 Supreme Court of Canada decision in R. v. K.C. Irving Ltd. had sounded the deathknell for an operative merger policy under the Combines Investigation Act. In essence, the Court ruled that the creation of a monopoly through merger, even if all competitors were eliminated, was legal, provided that no specific detriment to the public interest could be shown from the merger or resulting monopoly. The Combines Investigation Act was a totally ineffective tool for dealing with the economic consequences of merger and monopoly.

A. Policy Considerations

While bigness may be a factor, since it may well bestow significant market power, the tendency to equate monopoly with absolute bigness is misleading. The size of a seller relative to that of the market is critical, as well as the seller's ability, whether actual or potential, to use its power to influence market prices and conditions of supply. This commonly includes an ability to influence the behaviour of existing rivals and to block the entry of new competition. Markets may have local, national or world dimensions and vary significantly in terms of their economic significance. The conditions which permit the exercise of monopoly power in these markets are numerous and varied. They may derive from technological and organizational economies, control of scarce resources or marketing outlets, customer identification with the firm or product, cartel arrangements or government imposed market restrictions. Competition policy is not only concerned with the existence and use of monopoly power, but also with its creation and propagation. A number of factors must be taken into consideration in formulating the appropriate policy.

Why Evaluate: The basic reason for a policy regulating mergers and monopolies is the effect that these may have on the economy.

It is only those detrimental to the economy that need be identified and regulated.

Who Evaluates: Should the courts regulate mergers and monopolies or should a specialized administrative tribunal be charged with this duty? Advantages of an administrative tribunal include: the usually faster process of such tribunals and the likelihood of expertise in the adjudicator(s). As well, competition legislation raises difficult economic questions which may be better resolved by persons whose area of specialty is economic forecasting.

When to Evaluate: Two possibilities exist. One is to assess the merger or monopoly at its inception so as to anticipate and forestall any adverse anti-competitive effects. This procedure might include a requirement of notifying the appropriate authority of an intended business rearrangement in certain situations, with a subsequent waiting period for review by the authority. The other possibility is to deal with mergers and monopolies only after the fact. The Combines Investigation Act, although it contained prospective provisions, in fact functioned retrospectively.

What Mergers and Monopolies Are Reviewable: Since the Combines Investigation Act was not aimed at regulating all monopolies or mergers but only those detrimental to the public interest through their effect on competition, criteria might be established identifying which monopolies or mergers should be reviewed for possible proscription. For example, a threshold test using the size of the new company created by the merger (measured by sales or by assets), or using the percentage of the relevant market held by the company(ies) under examination, might be adopted. Mergers or monopolies satisfying the appropriate threshold test would be subject to review. While there is a degree of arbitrariness to such an approach, it does produce some certainty in the application of the law. If nothing else, the business community seeks such certainty. The alternative is to avoid any specific threshold test and to rely on less objective criteria.

Method of Proceeding: Until the enactment of the Competition Act, the combines laws took the form of criminal prohibitions

sanctioned by criminal penalties with trial by criminal procedures. Exclusive reliance on criminal law was an obstacle to implementing competition policy and contributed to the rigidity and inflexibility of the law and its enforcement. Success in criminal charges rested on the capacity of the Crown to meet a strict standard of proof, which was largely incompatible with the nature of the economic evidence presented to the courts and the types of decisions that the courts were required to make when evaluating the desirability of mergers and monopolies. Criminal procedures were slow, costly, and procedurally cumbersome. For these reasons, in framing merger and monopoly policy the use of civil procedures was determined to be preferable to the criminal law route.

B. The Combines Investigation Act

Prior to the enactment of the Competition Act, the legality of mergers and monopolies was governed by the provisions of s. 33 of the Combines Investigation Act. Under this Act, a merger occurred where a person or company acquired any sort of interest in another company; a monopoly was said to operate where one or more persons or companies had at least substantial control of some area of the market. Not all mergers or monopolies were proscribed, only those mergers which lessened or were likely to lessen competition to the detriment of the public and those monopolies which operated or were likely to operate to the detriment of the public.

Although legislation regulating mergers and monopolies has been in existence for many years, the Attorney General of Canada has not been overly successful in obtaining convictions against persons or companies accused under it. Before World War II, it appears that only once was an attempt made to obtain a conviction under s. 33. The defendant was acquitted. In 1953, the Eddy Match Co. was convicted of operating a monopoly. In 1960, the B.C. Sugar Refining Co. and Canadian Breweries were acquitted of operating monopolies contrary to s. 33. In 1970, the Electric Reduction Co. (industrial chemicals) pleaded guilty to a monopoly charge. In 1976, Canadian General Electric, Westinghouse Canada and GTE Sylvania Canada (the large lamps case) were acquitted of monopoly charges, as was

the K.C. Irving Co. (newspapers). The Irving case is important as it was, to all intents and purposes, the deathknell for s. 33 as an effective tool for controlling undesirable anti-competitive mergers and monopolies.

The offences of being party to an illegal merger or monopoly contrary to s. 33 were criminal offences. Accordingly, the court had to be satisfied "beyond a reasonable doubt" of the existence of all the constituent elements of the offence. With respect to mergers, the prosecution had to prove beyond a reasonable doubt that the merger did or was likely to lessen competition to the detriment of the public. With respect to monopolies, the prosecution had to prove beyond a reasonable doubt that the monopoly operated or was likely to operate to the detriment of the public. Monopolies were presumed to lessen competition, therefore the definition of monopoly did not need to refer to a lessening of competition.

The case law under s. 33 of the Combines Investigation Act established a number of propositions.

(1) The mere existence of a monopoly was not of itself proof of detriment to the public. The Crown had to prove beyond a reasonable doubt both the existence of the monopoly and that detriment to the public, as a fact, had resulted from the monopoly: R. v. K.C. Irving Ltd. (Supreme Court of Canada). This requirement proved to be a stumbling block. In the CGE case in 1970, the monopolistic group controlled 95% of the relevant market and in the Irving case 100%, nevertheless no conviction was obtained as the Crown was unable to prove detriment beyond a reasonable doubt.

(2) There would not necessarily be detriment to the public from a lessening of competition resulting from a merger or monopoly where the impugned activity did not prevent other competitors from attempting to establish themselves in the market: R. v. B.C. Sugar Refining Co. (B.C.S.C.).

(3) The mere acquisition of competitors, even for the purpose of eliminating them, was not illegal of itself where other effective competitors continued to exist: R. v. Canadian Breweries Ltd. (Ont. H.C.).

(4) There could be monopolies which involved a limited number of independent persons or companies who acted in such a way as to attempt to limit a market to themselves, although competing to some degree among themselves: R. v. Canadian General Electric Ltd. (Ont. H.C.).

(5) The involvement of a governmental agency in an aspect of the alleged monopolistic conduct had to be taken into account in determining whether the conduct was against the public interest and might require a conclusion that it was not: R. v. Canadian Breweries Ltd.

(6) The detriment to the public had to result directly from the lessening of competition resulting from the monopoly or merger in issue and not from some other aspect of the manner in which the accused company(ies) carried on business, i.e. pricing: R. v. Canadian Breweries Ltd.

(7) The requirement of proof beyond a reasonable doubt made it practicably impossible to prove the existence of an illegal monopoly or merger unless the company(ies) in question had been in operation for a reasonable length of time. It was unlikely that, without a past record, any court would be satisfied that any company was likely to act illegally, i.e., to the public detriment: R. v. K.C. Irving. There was a basic incompatibility between the criminal concept of "proof beyond a reasonable doubt" and an economic forecast of "likely detriment". Accordingly, the preventive effect of s. 33 was negligible.

(8) Canadian law perceived monopolies as "benign", i.e. not of themselves harmless or harmful.

C. Proposals for Reform

The process of reforming the merger and monopoly provisions of the Combines Investigation Act began in 1966 when the government of the day requested that the Economic Council of Canada prepare a report on competition policy in Canada. The Council's report, published in 1969, proposed far-reaching reforms which would make mergers and monopolies subject to civil rather than criminal law, with a specialized tribunal established to adjudicate such matters.

In 1971 the Minister of Consumer and Corporate Affairs introduced Bill C-256 in the House of Commons. This bill, which would have substantially altered the competition laws, met with considerable disapproval in the business community. In response to the negative reaction, the government proposed that the existing legislation be amended in two stages. The first stage of amendments, introduced in 1973, dealt with matters such as making the Combines Investigation Act applicable to services, the introduction of a number of civil reviewable matters, and amendments to provisions dealing with misleading advertising, resale price maintenance and conspiracy. These amendments became effective on 1 January 1976.

In 1977 Bills C-42 and C-13 (a revised version of Bill C-42) which dealt with mergers and monopolies, among other things, were introduced. These bills were soundly condemned by the business and academic communities and by the committees of the House of Commons and Senate charged with considering them. In essence, the complaints against the proposals contained in Bill C-13, insofar as mergers and monopolies were concerned, focused on the complexity of provisions which determined when mergers and monopolies would be illegal, the uncertainty seen to be the likely result of these provisions, the use of an administrative agency of the government rather than the courts as the first level of enforcement, the extensive nature of the powers granted to such a body and the limited extent of the rights of appeal to the courts from the decisions of the agency. In an effort to canvass the opinion of those concerned with competition legislation, the Ministry of Consumer and Corporate Affairs published and circulated a Discussion Paper entitled "Proposals for Amending the Combines Investigation Act: A Framework for Discussion", in 1981. Extensive consultation with the business, legal and academic communities took place. However, new competition legislation did not appear until April 1984 when Bill C-29 was introduced in the House of Commons. Bill C-29 died on the Order Paper with the calling of the 1984 federal election.

On 17 December 1985, Bill C-91, being composed of the Competition Tribunal Act and amendments to the Combines Investigation Act

(to be called the Competition Act), received first reading in the House of Commons. This bill was introduced after extensive discussions with the business and legal communities. Bill C-91 received Royal Assent on 17 June 1986 and was proclaimed in force on 19 June 1986, except for the notification provisions contained in sections 80-95, which were proclaimed in force 15 July 1987.

D. Competition Tribunal Act, Competition Act

Under the Competition Act mergers and monopolies (now abuse of dominant position) are adjudicated under civil rather than criminal law. The adjudicator has to assess whether competition is lessened substantially "on the balance of probabilities" rather than "beyond a reasonable doubt". The greater flexibility afforded by civil law is desirable in matters that do not lend themselves to absolute prohibitions and that require case-by-case consideration of the economic impact of business structures or practices.

Who Evaluates: Adjudication under the Combines Investigation Act was divided between the courts and the Restrictive Trade Practices Commission (RTPC). The courts had jurisdiction over criminal matters, including merger and monopoly, while the RTPC had jurisdiction over certain civil reviewable matters.

The Competition Tribunal Act provides for the creation of a Competition Tribunal composed of judges of the Federal Court - Trial Division, and lay persons. The RTPC is abolished. The Tribunal has jurisdiction to hear and determine cases respecting merger and monopoly, among others. It is an adjudicative body only and will not carry out the other functions which were previously performed by the RTPC such as authorizing the use of formal investigatory powers by the Director of Investigation and Research (the "Director") and general inquiries.

Applications to the Tribunal are to be heard by a panel of not fewer than three, but not more than five members. The panel, which must include at least one judicial member and one lay member, will be presided over by a judge. Questions of law are to be determined by the judicial members of the Tribunal, while both judicial and lay members will

decide questions of fact or mixed law and fact. Decisions of the Tribunal can be appealed to the Federal Court of Appeal.

The Competition Tribunal Act has settled the debate over the forum for adjudicating certain competition matters. Some had proposed reliance on the ordinary courts, while others had advocated the use of a specialized tribunal with expertise in business and economics. By establishing a quasi-judicial tribunal, the Act acknowledges that the input of lay persons who have familiarity with economic and business issues is essential to the decision-making process.

When to Evaluate: The Competition Act provides for compulsory pre-merger notification where the parties exceed certain thresholds relating to assets or sales. The requirement to give notice of certain proposed mergers allows such transactions to be reviewed and evaluated for potential violations of the Act. Pre-merger notification is necessary if a comprehensive analysis of larger, more complex mergers is to be carried out. Evidence of the inability of post-merger remedies to restore the status quo underscores the need for pre-notification.

The Act gives the Competition Tribunal power to prohibit a proposed merger or to dissolve a completed merger by which competition has been lessened or is likely to be lessened substantially.

With respect to abuse of dominant position, the Tribunal can prohibit persons from engaging in the practice of anti-competitive acts through which competition would be lessened substantially.

What Mergers and Monopolies are Reviewable:

(a) Mergers:

Any merger which substantially prevents or lessens, or is likely to prevent or lessen, competition is reviewable. The focus of the Act is thus on the effect of the merger.

In determining whether competition would be lessened substantially, the Competition Tribunal is directed to consider a number of specified factors such as: the extent of foreign competition in the market affected by the merger, whether any of the parties is about to fail, the availability of substitute products, barriers to entry into a particular

market, the likelihood of removal of an effective competitor, the extent of innovation in the market, and the extent to which effective competition would remain in the market affected by the merger.

The Tribunal cannot make a finding that a merger is likely to prevent or lessen competition substantially solely on the basis of evidence of concentration or market share. The Act contains a defence for situations where the gains in efficiency resulting from the merger would be greater than the costs due to any lessening of competition.

The merger provisions apply to joint ventures subject to exemptions for certain types of such ventures pertaining to a special project or program of research and development.

The Act requires the parties to certain proposed mergers to give prior notice of the transaction where such parties and their affiliates have assets in Canada or gross revenues from sales from or into Canada that exceed $400 million and where the business being acquired has assets or gross revenues from sales exceeding $35 million. Certain transactions, such as the acquisition of assets or shares resulting from foreclosure, gift or testamentary dispositions, and transactions between affiliates, are exempt from the pre-notification requirements. Mergers subject to pre-notification cannot be completed until the expiration of certain time periods (7 days or 21 days depending upon the extent of the information provided).

Critical to the effectiveness of the merger provisions of the Act is how the Tribunal will interpret the test of lessening competition "substantially". Essentially, the test must prevent mergers which would have adverse economic consequences and at the same time allow those which would not have a considerable impact on competition. The Combines Investigation Act required that the impugned merger lessen competition to the detriment or against the interest of the public. The courts interpreted this test to require that a merger create a virtual monopoly, thereby rendering the merger prohibition ineffective. It is anticipated that the adoption of the substantial lessening of competition test will make merger law more effective and overcome many of the obstacles to an operative merger policy that have been created by the courts.

(b) Monopolies:

The Competition Act repeals the monopoly provision of the Combines Investigation Act and replaces it with the civil provision of abuse of dominant position. Abuse of dominant position arises when the following elements are present: (1) one or more persons substantially or completely control a type of business in Canada or any area thereof; (2) such person or persons are engaged in a practice of anti-competitive acts; and (3) the effect of the practice is to lessen competition substantially in a market. The Act contains a list of acts which are considered to be anti-competitive, including: squeezing profit margins of unintegrated customers by vertically integrated suppliers, acquisition by a supplier of a customer and vice versa to impede or prevent entry into or elimination from a market, freight equalization, temporary use of fighting brands, buying up products to prevent erosion of existing price levels, adoption of incompatible product specifications, pre-emption of scarce facilities, requiring or inducing a supplier to sell only or primarily to certain customers, and selling below cost to discipline or eliminate a competitor.

In determining whether competition has been lessened substantially, the Tribunal must consider whether the impugned practice is the result of superior competitive performance. While superior competitive performance is not an absolute defence to abuse of dominant position, a determination that anti-competitive acts have occurred as a result of it would probably weigh heavily against a finding that competition has been lessened substantially.

When making an order in respect of abuse of dominant position, the Competition Tribunal will be limited to remedies sufficient to overcome the effects of any anti-competitive practices and restore competition in the market place. Among the types of orders that the Competition Tribunal can issue are orders prohibiting those concerned from engaging in anti-competitive acts and/or directing that any party involved take whatever action is necessary, including the divestiture of assets or shares, to overcome the effect of such acts.

The abuse of dominant position provisions focus on the actual effects of the practice of anti-competitive acts. The element of

intent is introduced in the list of anti-competitive practices contained in s. 78 of the Act where the words "purpose" or "object" or "designed" are used. It would appear, then, that the Director will be required to demonstrate both intent and effect in order for the Tribunal to make a finding that abuse of dominant position has occurred. Such a requirement may be an obstacle to the effectiveness of these provisions.

(c) Banks and Crown Corporations:

By amendments to the Combines Investigation Act in 1976 and the Bank Act in 1980, enforcement of competition policy with respect to financial institutions, with the exception of bank mergers and agreements, was brought under the Combines Investigation Act.

The Competition Act extends the merger provisions to bank mergers, subject to the power of the Minister of Finance to approve and certify that a merger is desirable in the interests of the financial system.

In order to overcome the effect of the Supreme Court of Canada decision in the Eldorado Nuclear/Uranium Canada case, where the Court held that Crown corporations that were agents of Her Majesty were not subject to the Combines Investigation Act, the Competition Act contains a provision (s. 2.1) which extends the Act's application to the commercial activities of Crown corporations. The regulatory activities of Crown corporations will continue to be outside of the purview of the Act.

E. The Operation of the Law

With the creation of the Competition Tribunal and the new merger and abuse of dominant position provisions of the Competition Act, new legal issues are bound to emerge and the body of Canadian competition law is likely to be significantly augmented. To date, the Competition Tribunal has rendered four final decisions relating to mergers. In each of these, the Tribunal had been called upon to issue consent orders which would allow the mergers to proceed on the terms negotiated by the Director of Investigation and Research and the respective parties.

In the first case (Palm Dairies), the Tribunal refused to grant the consent order because it could not satisfy itself that the order would be enforceable or effective in meeting the objectives of the Competition Act. In two other cases (Air Canada/Canadian Airlines International computer reservations systems merger and Asea Brown Boveri/Westinghouse), consent orders were issued and the mergers were allowed to proceed. In the fourth case (Imperial Oil/Texaco), a consent order was approved after Imperial Oil addressed various competition concerns raised by the Tribunal in its rejection of the original consent order proposal agreed to by Imperial and the Director.

The reasons given by the Tribunal for granting the consent order in the Air Canada case are noteworthy because in them the Tribunal sought to define its role in a consent order proceeding. By stating that its responsibility is to ensure that the proposed terms and conditions of a merger as embodied in a consent order are likely to be effective in eliminating any adverse effects of the merger, the Tribunal implies that it sees its role as being limited to accepting or rejecting the order. In the Tribunal's view, in a consent order proceeding it has no mandate to impose its own terms and conditions on the parties.

In another case the Director applied to the Competition Tribunal for an order dissolving certain mergers that had taken place in the meat rendering industry in Quebec. The parties to the mergers initiated an action in the Quebec Superior Court challenging the constitutionality of the Competition Tribunal Act and the Competition Act as being ultra vires the powers of Parliament. The case also includes a challenge to both the Competition Tribunal and certain sections of the Competition Act on the basis of the Canadian Charter of Rights and Freedoms.

In a decision on 6 April 1990, the Quebec Superior Court declared the Competition Tribunal unconstitutional and struck down parts of the Competition Act relating to the power of the Tribunal to dissolve completed mergers and block proposed mergers. The Court declared that these provisions violated the right to freedom of association guaranteed

by the Charter. The Tribunal, which is composed of both lay and judicial members and functions as a court, was found to be unconstitutional because it lacks the attributes of independence and impartiality that normally characterize a court. These shortcomings are manifested in the method of appointment and the role of the lay members of the Tribunal. In addition, the court held that the presence of the lay members on the Tribunal infringes the right to a fair and impartial hearing. The federal government intends to appeal this decision.

A recent decision of the Federal Court of Appeal (Chrysler Canada Ltd.) further calls into question the power of the Competition Tribunal. In the Chrysler case, the court held that the Tribunal did not have the power to punish for contempt those who fail to comply with a final order of the Tribunal under Part VIII of the Competition Act. The Chrysler decision dealt with a "refusal to deal" situation; however, it is clear that it will also affect attempts to punish for contempt those not complying with a final order in relation to a merger or abuse of dominant position.

On 4 October 1990, the Competition Tribunal rendered its first decision in relation to the abuse of dominant position provisions of the Competition Act. In this case, the Director alleged that the NutraSweet Company had engaged in a series of anti-competitive acts in connection with the sale of the artificial sweetener aspartame. The Tribunal held that a number of NutraSweet's supply contract terms, such as those requiring purchasers to use only the NutraSweet brand of aspartame, price discounts for displaying the NutraSweet name and logo, and provisions allowing NutraSweet to match a competitor's price, served to inhibit competitors from entering or making gains in the aspartame market. NutraSweet argued against the validity of the Tribunal, which responded that it was validly constituted.

PARLIAMENTARY ACTION

A. The Competition Bill 1971

Government action toward reform began in 1971 with the introduction of Bill C-256 into Parliament. Its approach to mergers and monopolies incorporated the 1969 recommendations of the Economic Council of Canada. The bill was the object of fierce opposition from the business community, and over 190 briefs were presented to the Minister. In July 1973, it was announced that reform of Canada's competition policy would be split into two stages, with changes in legislation respecting mergers and monopolies to be part of Stage II.

B. Competition Bills 1977

In March 1977, Bill C-42, containing the Stage II amendments, was introduced into Parliament. The bill was referred to the House of Commons Standing Committee on Finance, Trade and Economic Affairs later the same month. Forty-three firms and 38 trade associations presented briefs to the Committee and in August 1977 the Committee published its Report, which contained a number of recommendations respecting the merger and monopoly provisions. The Standing Senate Committee on Banking, Trade and Commerce, which heard from eight organizations, published its Interim Report on Bill C-42 in July 1977 recommending changes to the Bill's merger and monopoly provisions. Subsequently, in November 1977, Bill C-13 was introduced into Parliament, incorporating several changes from Bill C-42 in its provisions. The bill was referred to the Standing Senate Committee on Banking, Trade and Commerce on 23 November 1977. The Report, published on 29 June 1978, recommended that the bill be withdrawn and reconsidered. Bill C-13 was allowed to die after first reading.

C. Competition Bill 1984

On 2 April 1984, Bill C-29, incorporating changes to merger and monopoly law, received first reading in the House of Commons. It died on the Order Paper with the calling of an election.

D. Competition Bill 1985

On 17 December 1985, Bill C-91 was introduced into the House of Commons. It received Royal Assent on 17 June 1986 and was proclaimed in force on 19 June 1986, except for sections 80-95 (pre-merger notification), which were proclaimed in force on 15 July 1987.

CHRONOLOGY

1923 - Provisions aimed at controlling mergers and monopolies were included in the Combines Investigation Act.

1960 - The Crown lost two important mergers and monopoly cases, the Canadian Breweries Case and the British Columbia Sugar Refining Case.

July 1969 - The Economic Council of Canada published its Interim Report on Competition Policy, recommending new legislation aimed at controlling mergers and monopolies.

June 1971 - Bill C-256, containing changes to merger and monopoly legislation, was introduced into Parliament.

June 1973 - The Minister of Consumer and Corporate Affairs announced that the reform of competition law would be divided into two stages, with the proposals to reform the merger and monopoly provisions to be part of the second stage.

June 1976 - The Report Dynamic Change and Accountability in a Canadian Market Economy was published. The Report, written by an independent committee appointed by the Minister of Consumer and Corporate Affairs, recommended various changes to the merger and monopoly law.

November 1976 - The Supreme Court of Canada rendered its decision in the K.C. Irving Case, making the merger and monopoly provisions of the Combines Investigation Act virtually ineffective.

March 1977 - Bill C-42, incorporating changes to merger and monopoly law, was introduced into Parliament.

6 July 1977 - The Standing Senate Committee on Banking, Trade and Commerce published its Interim Report on Bill C-42.

5 August 1977 - The House of Commons Standing Committee on Finance, Trade and Economic Affairs published its Report, Proposals for Change, on Bill C-42.

18 November 1977 - Bill C-13, revising Bill C-42, was introduced into Parliament.

15 May 1978 - The Report of the Royal Commission on Corporate Concentration was published. The Report included an overview of general considerations for merger and monopoly policy and a critical analysis of Bill C-13.

29 June 1978 - The Standing Senate Committee on Banking, Trade and Commerce published its Report on Bill C-13.

3 September 1980 - Kent Commission was established to enquire into concentration of ownership in the newspaper industry and the effect on the public of the closing of newspapers.

27 February 1981 - The State of Competition in the Canadian Petroleum Industry was published by the Ministry of Consumer and Corporate Affairs. The report concluded that the oil companies had engaged in anti-competitive conduct to the financial detriment of the Canadian public.

April 1981 - Ministry of Consumer and Corporate Affairs prepared and circulated a discussion paper containing proposed amendments (Stage Two) to the competition legislation.

- Charges were laid against Thomson Newspapers and Southam Inc. under the Combines Investigation Act alleging, among other matters, breaches of s. 33 through merger or monopolistic conduct.

May 1981 - A report by the Bureau of Competition Policy of the Ministry of Consumer and Corporate Affairs on the uranium cartel of the mid 1970s was completed and sent to the Attorney-General for consideration and disposition. The report appeared to indicate that the cartel, while in operation, had broken various competition provisions of the Combines Investigation Act. The federal government and the uranium mining companies of Canada, along with the governments and mining companies of Australia,

South Africa, France, and the Rio Tinto Zinc Company of Great Britain, were participants in the cartel.

7 July 1981 - The Canadian uranium producing companies, all of which were members of the cartel, were charged with conspiring to lessen unduly competition in Canada. The federal government subsequently denied that the cartel was intended to apply to the Canadian market and denied involvement on its part in any arrangement to that effect.

18 August 1981 - Kent Commission Report (Royal Commission on Newspapers) was released.

July and August 1982 - Spokesmen for the Minister of Consumer and Corporate Affairs and the Minister himself indicated that amendments to the Combines Investigation Act to deal with mergers and monopolies would be presented to Parliament in the fall. It was expected that these amendments would strengthen the role of the Restrictive Trade Practices Commission to permit it to deal effectively with the abuse of dominant market position.

March and April 1983 - Following Cabinet's December 1982 approval in principle of proposed competition policy legislative action, the Minister of Consumer and Corporate Affairs conducted a round of consultations with key business groups. It was expected that necessary legislation would be presented in a new session of Parliament before the end of 1983.

9 December 1983 - Charges against Thomson Newspapers and Southam Inc. under the Combines Investigation Act provisions on mergers and monopolistic conduct were dismissed by Mr. Justice Anderson of the Ontario Supreme Court.

15 December 1983 - The Supreme Court of Canada rendered a judgment in which it was decided that the federal Crown corporations allegedly involved in the uranium cartel were immune from criminal liability under s. 32 of the Combines Investigation Act.

28 February 1984 - The Crown decided not to appeal the dismissal of charges against Thomson and Southam Inc.

2 April 1984 - Bill C-29, incorporating changes to merger and monopoly law, received first reading in the House

of Commons but died on the Order Paper with the calling of an election.

5 November 1984 - According to the Throne Speech, changes in competition law would be presented to Parliament.

February and September 1985 - Federal-provincial-territorial meetings of Ministers of Consumer and Corporate Affairs discussed competition policy reform.

March 1985 - The Department of Consumer and Corporate Affairs released a consultation paper entitled Reform of Competition Policy in Canada.

September 1985 - Royal Commission on the Economic Union and Development Prospects for Canada (Macdonald Commission) advocated reform of the regulation of mergers and monopolies.

17 December 1985 - Bill C-91, incorporating changes to merger and monopoly law, received first reading in the House of Commons.

19 June 1986 - Bill C-91 was proclaimed in force, except for sections 80-95.

15 July 1987 - Sections 80-95 of the Competition Act (pre-merger notification) were proclaimed in force.

6 April 1990 - The Quebec Superior Court declared the Competition Tribunal to be unconstitutional and struck down certain sections of the Competition Act relating to the powers of the Competition Tribunal to dissolve mergers.

10 July 1990 - The Federal Court of Appeal held that the Competition Tribunal does not have the power to punish for contempt those who fail to comply with a final order of the Tribunal made under Part VIII of the Competition Act.

4 October 1990 - Its decision on the NutraSweet Company was the Competition Tribunal's first decision with regard to abuse of dominant position under the Competition Act.

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